

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**FRANK OLIVO and
JANIE OLIVO,**

Plaintiffs,

v.

**WIGHT NATIONAL FLOOD
INSURANCE COMPANY**

Defendant.

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CIVIL ACTION NO. 1:16-cv-1002

NOTICE OF REMOVAL

Defendant, WRIGHT NATIONAL FLOOD INSURANCE COMPANY (“WRIGHT”), a Write-Your-Own Program insurance carrier participating in the United States government’s National Flood Insurance Program, pursuant to the National Flood Insurance Act of 1968 (“NFIA”), as amended,¹ appearing in its “fiduciary”² capacity as the “fiscal agent of the United States,”³ hereby removes the state court action entitled “*Frank Olivo and Janie Olivo v. Wright National Flood Insurance Company*,” bearing Case No. 16-1379, in the 274th Judicial District Court of Hayes County, Texas, to the United States District Court for the Western District of Texas, Austin Division, and respectfully represents as follows:

Notice of Removal is Timely

1. Plaintiffs Frank Olivo and Janie Olivo (“Plaintiffs”) filed the referenced state court action against Wright on July 12, 2016. A true and accurate copy of the Plaintiffs’ Original

¹ 42 U.S.C. § 4001, *et seq.*

² *See* 44 C.F.R. § 62.23(f).

³ 42 U.S.C. § 4071(a)(1); *Wright v. Allstate Ins. Co.*, 415 F.3d 384, 386 (5th Cir. 2005).

Petition (“Petition”) is attached and incorporated hereto as Exhibit “A,” as required by 28 U.S.C. §§ 1446(a) and 1447(b).

2. Wright was served with the state court Citation and Petition on or about August 17, 2016. Thirty days have not elapsed since Wright first received the Petition through service of process or otherwise, and removal is timely under 28 U.S.C. §§ 1441 and 1446.

Jurisdiction and Venue

3. Plaintiffs aver that Wright breached its contract of insurance by allegedly failing to pay the full amount of flood insurance benefits Plaintiffs claim they are entitled to under a Standard Flood Insurance Policy (“SFIP”) issued by Wright.

4. Wright participates in and issues SFIPs under the National Flood Insurance Program’s (“NFIP”) Write-Your-Own Program. The NFIP is a federal program created pursuant to the NFIA, 42 U.S.C. § 4001, *et seq.*

5. The payment that Plaintiffs seek in this lawsuit would constitute a direct charge on the public treasury, and would be binding upon the federal government. *Wright v. Allstate Ins. Co.*, 415 F.3d 384, 386 (5th Cir. 2005); 44 C.F.R. § 62.23(f); 44 C.F.R. Pt. 62, App. A, Art. III(D)(1) and (2).

6. As such, this Court has original exclusive jurisdiction over this matter pursuant to 42 U.S.C. § 4072 and 44 C.F.R. Part 61, App. A(1), Article VII(R), which vests in the United States District Court for the district in which the insured property is located with exclusive subject-matter jurisdiction, without regard to the amount in controversy, over cases arising out of a disputed flood insurance claim under the NFIP. *See* 42 U.S.C. § 4072.

7. According to the Petition, Plaintiffs' insured property is located at 1201 Barbra Drive, San Marcos, Texas, in Hays County, Texas,⁴ which is located within the jurisdiction of the United States District Court for the Western District of Texas. Therefore, this Court is the proper Court for removal of this action pursuant to 42 U.S.C. § 4072.

8. This Court also has original jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiffs' right to relief involves the interpretation of federal statutes and regulations under the NFIP and necessarily depends upon the resolution of substantial questions of federal law.

9. Promptly after filing this Notice of Removal, written notice hereof will be given to Plaintiffs and will be filed with the Clerk of Court for the District Court in and for Hays County, Texas, in conformity with 28 U.S.C. § 1446(d).

WHEREFORE, Wright National Flood Insurance Company prays that this Notice of Removal be accepted as good and sufficient and that the aforementioned action, Case No. 16-1379 in the 274th Judicial District Court of Hays County, Texas, be removed to the United States District Court for the Western District of Texas for further proceedings as provided by law.

Dated: August 25, 2016

Respectfully submitted,

BAKER & HOSTETLER, LLP

By: /s/ Bradley K. Jones

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**COUNSEL FOR DEFENDANT WRIGHT
NATIONAL FLOOD INSURANCE COMPANY**

⁴ The correct property address is actually 1201 Barbara Drive.

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of August, 2016, I served a copy of the foregoing on all counsel of record by certified mail, return receipt requested:

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/s/ Bradley K. Jones
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